

**ADDENDUM #2  
TO SPEC. 06-065**

**RFP ENVIRONMENTAL ASSESSMENT PHASE 1 AND PHASE 2  
IN THE VICINITY OF 48<sup>TH</sup> & “O” STREET**

Addendum #2 to Spec. 06-065 for Environmental Assessment Phase 1 and Phase 2 in the Vicinity of 48<sup>th</sup> & “O” Street originally to be opened on Wednesday, February 22, 2006 at 12:00 noon.

**The following are questions that have been submitted to the City of Lincoln Purchasing Department:**

- Q. Has the City developed guidelines as to where the eight Phase I and Phase II assessments should be or has it identified the locations on the project site?
- A. Phase I and Phase II assessments will be on the North side of “O” Street only.
- Q. Does the City have private property owner’s permission for conducting the Phase 1 assessments or would the consultant be responsible for making those contacts and getting permission?
- A. The City will make contacts.
- Q. How do you want the public to access information? Would public information come through the public meetings only or would the City want the public to be able to access information by other means?
- A. See sections 3.7, 3.7.1 thru 3.7.4.
- Q. Have any soil samples been taken on the South side of the 48<sup>th</sup> & “O” Street site?
- A. Yes
- Q. Has there been any laboratory testing of soils and what are the results?
- A. Yes, Reports available from Wynn Hjermstad, EO 074823.

Q. Should the consultant exclude any information on the South side for purposes of preparing a Phase I site assessment?

A. No, unless agreed in writing from the City.

Q. If a private landowner denies access to his/her site for the purposes of Phase I or Phase II investigations, would those areas be excluded from the All Appropriate Inquires determination that is to be published with the Register of Deeds of Lancaster County?

A. Yes

Q. Addendum #1 to the Specification mentions that the proposals were "Originally to be opened on Wednesday February 22, 2006. Is there a change in the date for submitting proposals?


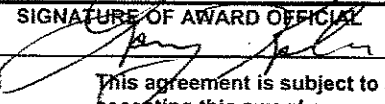
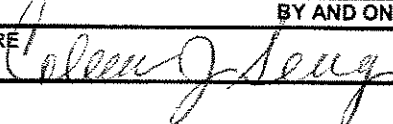
A. No, opening has not changed

Q. Can we have copies of the grant?

A. See attached.

All other terms and conditions of the RFP shall remain unchanged.  
Dated this 17<sup>th</sup> day of February, 2006.

Vince M. Mejer  
Purchasing Agent

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	ASSISTANCE ID NO.			DATE OF AWARD 09/26/2005
		PRG	DOC ID	AMEND#	
		BF - 98763401 - 0			MAILING DATE 10/03/2005
		TYPE OF ACTION New			
PAYMENT METHOD: ACH			ACH#		
<b>RECIPIENT TYPE:</b> Municipal			<b>Send Payment Request to:</b> U.S. Environmental Protection Agency - Las Vegas Finance Center P.O. Box 98515, Las Vegas, NV 89193-8515 Contact: 702-798-2495, FAX: 702-798-2423		
<b>RECIPIENT:</b> City of Lincoln 808 P Street, Suite 400 Lincoln, NE 68508 EIN: 47-6006256			<b>PAYEE:</b> Same as Recipient 808 P Street, Suite 400 Lincoln, NE 68508		
<b>PROJECT MANAGER</b>		<b>EPA PROJECT OFFICER</b>		<b>EPA GRANT SPECIALIST</b>	
Ernesto Castillo 808 P Street, Suite 400 Lincoln, NE 68508 E-Mail: ecastillo@ci.lincoln.ne.us Phone: 402-441-7855		Julie Elfving 901 North Fifth Street, SUPR/STAR Kansas City, KS 66101 E-Mail: Elfving.Julie@epamail.epa.gov Phone: 913-551-7475		Robert Bukaty Grants Management Office, PLMG/RFMB E-Mail: Bukaty.Robert@epamail.epa.gov Phone: 913-551-7846	
<b>PROJECT TITLE AND DESCRIPTION</b> Lincoln Brownfields Assessment The City of Lincoln will survey, inventory, assess and characterize brownfield sites, and engage in planning for eventual cleanup and redevelopment of selected sites.					
<b>BUDGET PERIOD</b> 08/01/2005 - 09/30/2007		<b>PROJECT PERIOD</b> 08/01/2005 - 09/30/2007		<b>TOTAL BUDGET PERIOD COST</b> \$128,200.00	
				<b>TOTAL PROJECT PERIOD COST</b> \$128,200.00	
<b>NOTE:</b> The Agreement must be completed in duplicate and the Original returned to the appropriate Grants Management Office listed below, within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA. Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the Recipient subsequent to the document being signed by the EPA Award Official, which the Award Official determines to materially alter the Agreement, shall void the Agreement.					
<b>OFFER AND ACCEPTANCE</b>					
The United States, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers Assistance/Amendment to the <u>City of Lincoln</u> for <u>100.00</u> % of all approved costs incurred up to and not exceeding <u>\$128,200</u> for the support of approved budget period effort described in application (including all application modifications) cited in the Project Title and Description above, signed <u>07/15/2005</u> included herein by reference.					
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>		
<b>ORGANIZATION / ADDRESS</b>			<b>ORGANIZATION / ADDRESS</b>		
Grants Management Office 901 North Fifth Street Kansas City, KS 66101			U.S. EPA, Region 7 Superfund Division 901 North Fifth Street Kansas City, KS 66101		
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>					
<b>SIGNATURE OF AWARD OFFICIAL</b>		<b>TYPED NAME AND TITLE</b>		<b>DATE</b>	
		Larry Kalwei, Grants Management Officer		09/26/2005	
This agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter 1, Subchapter B and of the provisions of this agreement (and all attachments), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.					
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>					
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b>		<b>DATE</b>	
		Coleen J. Seng, Mayor		10/10/05	

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 128,200	\$ 128,200
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 128,200	\$ 128,200

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

## Fiscal

[illegible]

Budget Summary Page

Table A - Object Class Category (Non-construction)		Total Approved Allowable Budget Period Cost
1. Personnel		\$42,035
2. Fringe Benefits		\$4,888
3. Travel		\$4,420
4. Equipment		\$0
5. Supplies		\$310
6. Contractual		\$75,352
7. Construction		\$0
8. Other		\$1,195
9. Total Direct Charges		\$128,200
10. Indirect Costs: % Base		\$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %.)		\$128,200
12. Total Approved Assistance Amount		\$128,200
13. Program Income		\$0

### **Administrative Conditions**

1. Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. As mandated by this Act, the recipient agrees to provide certification to the award official via EPA Form 5700-53, *Lobbying and Litigation Certificate*, within 90 days after the end of project period. The form can be accessed at <http://www.epa.gov/ogd/forms/adobe/5700-53.pdf>.

Recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of federal grant funds for litigation against the United States. Any Part 30 recipient shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

2. The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

3. In accordance with EPA Order 1000.25 and Executive Order 13101, *Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition*, the recipient agrees to use recycled paper for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. Please note that Section 901 of E.O. 13101, dated September 14, 1998, revoked E.O. 12873, *Federal Acquisition, Recycling, and Waste Prevention* in its entirety.

Any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

4. Recipient shall fully comply with Subpart C of 40 CFR Part 32, entitled "Responsibilities of Participants Regarding Transactions." Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 40 CFR Part 32, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 40 CFR 32.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

5. In order to comply with the Debt Collection Improvement Act of 1966, the Recipient agrees to complete and return the attached Payment Information Form ACH Vendor Payment System, (TFS Form 3881) to the EPA Las Vegas Finance Center, P.O. Box 98515, Las Vegas, Nevada 89193-8515. Fax:702-798-2423, Telephone: 702-798-2495.
6. Recipient agrees to ensure that all space for conferences, meetings, conventions or training funded in whole or in part with Federal funds comply with the Hotel and Motel Fire Safety Act of 1990.
7. The recipient agrees to comply with the requirements for EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements:

(a) Except as otherwise provided, the recipient accepts the applicable FY 2005 Minority Business Enterprise (MBE)/Womens Business Enterprise (WBE) "fair share" goals/objectives negotiated with EPA by the Nebraska Department of Environmental Quality (NDEQ) as follows:

NE	MBE	WBE
Supplies	5%	12%
Equipment	6%	11%
Services	5%	11%
Construction	6%	8%

(b)(1) The recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women and Historically Black Colleges and Universities.

(2) For assistance agreements related to research under the Clean Air Act Amendments of 1990, the recipient agrees to ensure, to the fullest extent possible, that at least the applicable "fair share" objectives of Federal funds for prime contracts or subcontracts for supplies, construction, equipment or services are made available to organizations owned or controlled by socially and economically disadvantaged individuals, women, disabled Americans, Historically Black Colleges and Universities, Colleges and Universities having a student body in which 40% or more of the students are Hispanic, minority institutions having a minority student body of 50% or more, and private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(c) The recipient agrees to include in its bid documents the applicable "fair share" objectives of Federal funds and require all of its prime contractors to include in their bid documents for subcontracts the negotiated "fair share" percentages.

(d) The recipient agrees to follow the six affirmative steps stated in 40 CFR §30.44(b), 40 CFR §31.36(e), or 40 CFR §35.6580, as appropriate, and retain records documenting compliance.

(e) The recipient agrees to submit an EPA form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements," beginning with the Federal fiscal year quarter the recipient receives the award and continuing until the project is completed. These reports must be submitted to the EPA, MBE/WBE Coordinator, within 30 days of the end of the Federal fiscal quarter (January 30, April 30, July 30, and October 30). For assistance awards for continuing environmental programs and assistance awards with institutions of higher education, hospitals and other non-profit organizations, the recipient agrees to submit an EPA form 5700-52A to the EPA, MBE/WBE Coordinator, by October 30 of each year.

(f) If race and /or gender neutral efforts prove inadequate to achieve a "fair share" objective, the recipient agrees to notify EPA in advance of any race and/or gender conscious action it plans to take to more closely achieve the "fair share" objective.

(g) Non-governmental recipients that wish to negotiate their own MBE/WBE goals must submit proposed MBE/WBE goals based on an availability analysis, or, at their option, a disparity study, of qualified MBEs and WBEs to do the work in the relevant market for construction, equipment, services, and supplies. The recipient agrees to submit proposed "fair share" objectives, together with the supporting availability analysis or disparity study, to the EPA, MBE/WBE Coordinator, within 30 days of award. EPA will conclude "fair share" negotiations within 30 days of receiving the submission. Once EPA approves the objectives, the recipient agrees to apply them in accordance with paragraphs (b)-(f).

3. EPA may take corrective action under 40 CFR Parts 30, 31, and 35, as appropriate, if the recipient fails to comply with these terms and conditions.

8. Recipient agrees to provide the following financial and programmatic reports:

1. **Quarterly performance reports**, are due on all activities identified in the workplan, including those performed by the Recipient through Interagency Agreements and subagreements in accordance with 40 CFR 30.51 or 31.40(b); whichever is applicable. These reports will contain at a minimum the requirements set forth in Programmatic Condition, II. **GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS, D. Quarterly Progress Reports.**

These reports shall be due no later than 30 days after the end of each reporting period. The **final performance report** is due within 90 days after the expiration of the project period.

2. **Financial Status Reports** (Standard Form 269) are due in accordance with 40 CFR 30.52 or 40 CFR 31.41(b); whichever is applicable. For programs or projects with a project period in excess of one year a annual Financial Status Report will be due within 90 days after the grant year. Final reports will be due within 90 days after the expiration or termination of grant support. Financial Status Reports must be submitted to the following address: U.S. EPA - Las Vegas FC, P.O. Box 98515, Las Vegas, Nevada 89193-8515.

## **Programmatic Conditions**

### **1. I. GENERAL FEDERAL REQUIREMENTS**

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA approved scope of work.

#### **A. Federal Policy and Guidance**

1. a. **Cooperative Agreement Recipients:** In implementing this agreement, the cooperative agreement recipient (CAR) shall insure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws



and regulations.

b. CERCLA 104(g) requires that recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. If the CAR uses funds awarded under this agreement to contract for construction, repair or alteration work, it must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.

c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225 ) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

d. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR 31.36(e) or 40 CFR 30.44(b); OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

## **B. Eligible Brownfields Site Determinations**

1.
  - a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.
  - b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.
2.
  - a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for discussion of this element):
    - (i) that a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
    - (ii) that the State determines there is "no viable responsible party" for the site;
    - (iii) that the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and

(iv) that the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate petroleum program official.

b. Documentation must include the identity of the State program official contacted, the State official's telephone number, the date of the contact, and a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

## II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of this agreement is two years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the Agency may terminate this agreement.
3. Assessment funding for any eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA and then funding is not to exceed \$350,000 at the site subject to the waiver.

### B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; review of project phases; and approval of substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determining whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under §107 of CERCLA.
  - c. Substantial EPA involvement may include reviewing financial and environmental status

reports; and monitoring all reporting, record-keeping, and other program requirements.

d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.

b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.

c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

**C. Cooperative Agreement Recipient Roles and Responsibilities**

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors are consistent with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.

(Note: Cooperative Agreement Recipients expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.)

**D. Quarterly Progress Reports**

1. The CAR must submit progress reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:
  - a. Documentation of progress at meeting performance outcomes/outputs, project narrative, project time line and an explanation for any slippage in meeting established output/outcomes.
  - b. An update on project milestones.
  - c. A budget recap summary page with the following headings: Current Approved Budget;

Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.

d. Specification of costs incurred at petroleum contaminated brownfields sites.

e. Clear identification of which activities performed during the reporting period were undertaken with EPA funds, and relationship of EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where assessment activities were completed. To the extent consistent with the EPA approved scope of work for this agreement also include health monitoring, studies, insurance, and/or institutional controls undertaken with EPA funds.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific sites under this grant.
3. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA approved scope of work.
4. The CAR must complete and submit relevant portions of the Property Profile Form (available at <http://www.epa.gov/brownfields/pubs/rptforms.htm> or from the EPA Project Officer) reporting the commencement of a Phase I assessment, the expenditure of \$1,000 or more of grant funds at a property or the following assessment:
  - a. Acres per property
  - b. Assessments completed
  - c. No cleanup required
  - d. Types of contaminants assessed
  - e. Acres of greenspace to be created/preserved
  - f. Number of properties with one or more engineering/institutional controls
  - g. Redevelopment underway
  - h. Funds leveraged
  - i. Jobs leveraged
  - j. Health monitoring studies, insurance, institutional controls funded

The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred.

5. In accordance with 40 CFR. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

### III. FINANCIAL ADMINISTRATION REQUIREMENTS

#### A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the scope of work, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:
  - a. Determining whether assessment activities at a particular site are authorized by CERCLA 104(k);
  - b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA 104(k);
  - c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section B.

d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. **Local Governments only.** No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls) should the CAR decide to use funds for this purpose. If the CAR does decide to use funds for this purpose, a workplan amendment must be submitted to the EPA Project Officer for approval prior to commencement of the work. The CAR must maintain records on funds that will be used to carry out said tasks of its EPA approved scope of work to ensure that no more than 10% of its funds are used for brownfield program development and implementation (including monitoring of health and institutional controls).

**B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient**

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. Cleanup activities;
  - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
  - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
  - d. To pay for a penalty or fine;
  - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;
  - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
  - h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.
  - b. Ineligible grant administration costs include direct costs for:
    - (i) Preparation of applications for Brownfields grants;

- (ii) Record retention required under 40 CFR 31.42;
  - (iii) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
  - (iv) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
  - (v) Maintaining and operating financial management systems required under 40 CFR 31;
  - (vi) Preparing payment requests and handling payments under 40 CFR 31.21;
  - (vii) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
  - (viii) Close out under 40 CFR 31.50.
3. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
  - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

#### C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
2. The CAR must deposit advances of grant funds and program income (e.g., fees) in an interest bearing account.
  - a. Interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
  - b. Interest earned on program income is considered additional program income.

### IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

#### A. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce adequate data to meet project objectives. NDEQ is authorized through an approved Quality Management Plan (QMP), to review and approve

Quality Assurance Project Plans (QAPPs) in lieu of EPA. Individual or generic Quality Assurance Project Plans (QAPPs) for activities within the scope of this agreement must be submitted NDEQ for review and approval prior to the collection of environmental samples. Review and approval of non-state EPA Brownfields grantee QAPPs by a state program will be limited to those instances where there is mutual agreement among the parties involved (the state, EPA, and the grantee), and the non-state EPA grantee agrees to participate in and follow the guidelines established within the State Response Program. Oversight of the state's QAPP approval process for Brownfields will be part of the Management Systems Review (MSR) process described in EPA Region 7's QMP. All QA documents will be prepared in accordance current EPA requirements as defined in *EPA Requirements for Quality Assurance Project Plans: EPA QA/R-5* (EPA/240/B-01/003, March 2001) and *Guidance for Quality Assurance Project Plans: EPA QA/G-5* (EPA/240/R-02/009, December 2002) or their subsequent revisions. State law may impose additional QA requirements.

The CAR will supply EPA with a copy of the first QAPP reviewed and approved by NDEQ. For subsequent QAPPs, the CAR will provide EPA with a copy of the completed signature page indicating NDEQ approval.

#### **B. Completion of Assessment Activities**

1. The CAR shall properly document the completion of all activities described in the EPA approved scope of work. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

#### **C. All Appropriate Inquiry**

1. As required by CERCLA §104(k)(2)(B)(ii) and CERCLA §101(35)(B), the CAR shall ensure that a "Phase I" site characterization and assessment carried out under this agreement will be performed in accordance with ASTM standard E1527-2000 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," until EPA promulgates final federal standards governing the conduct of "all appropriate inquiry." After EPA promulgates final regulations governing the conduct of all appropriate inquiry, Phase I site characterizations and assessments will have to be conducted in compliance with the final regulations. This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

#### **V. Conflict of Interest: Appearance of lack of Impartiality**

##### **A. Conflict of Interest**

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:
  - (a) The affected party,
  - (b) Any member of his immediate family,
  - (c) His or her partner, or

(d) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

## **VI. PAYMENT AND CLOSEOUT**

### **A. Payment Schedule**

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

### **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50.